

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

JOHN R. BUND II, personally, as Executor of the ) NO. 2:16-cv-920-JLR  
Estate of Richard C. Bund, deceased, S. SCOTT )  
JAMES and NOEL L. JAMES, a married couple, ) FOURTH AMENDED COMPLAINT  
and on behalf of others similarly situated, ) FOR CLASS ACTION AND  
Plaintiffs, ) DAMAGES  
vs. ) JURY DEMAND  
SAFEGUARD PROPERTIES, LLC, a Delaware )  
corporation, )  
Defendant. )

JOHN R. BUND II, as Executor of the Estate of Richard C. Bund, deceased, S. SCOTT  
JAMES and NOEL L. JAMES, a married couple, and on behalf of others similarly situated,  
through their attorneys of record, Jeffers, Danielson, Sonn & Aylward, P.S., by Clay M. Gatens  
and Devon A. Gray, Daudt Law PLLC, by Michael D. Daudt, and Terrell Marshall Law Group  
PLLC, by Beth E. Terrell and Blythe H. Chandler, bring this Fourth Amended Complaint for  
Class Action and Damages against Safeguard Properties, LLC, and allege as follows:

**I. NATURE OF THE CASE**

1.1 Safeguard contracts with mortgage lending and servicing institutions to conduct services on default and pre-foreclosure properties located throughout Washington State that are subject to loans owned, held, or serviced by lending or servicing institutions.

1.2 Specifically, Safeguard is hired by lending and servicing institutions to determine the occupancy status of properties, secure properties deemed vacant or abandoned by Safeguard, remove personal property from within the property, and provide miscellaneous other so-called “property preservation services.” Such lending and servicing institutions purportedly derive their authority to conduct such activities from a form deed of trust provision utilized across the industry (the “Entry Provision”). Safeguard purportedly derives its authority to conduct these activities from its clients’ Entry Provision.

1.3 Safeguard derives revenue from recovering fees from its clients for completing property preservation and other property related services.

1.4 Such services include but are not limited to: forcibly entering the property to change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off.

1.5 On July 7, 2016, in *Jordan v. Nationstar Mortgage, LLC*, No. 92081-8 (the “*Jordan Decision*”), the Washington State Supreme Court deemed such form deed of trust provisions unenforceable as contrary to Washington State law, thereby eroding any purported legal justification for Safeguard to even enter upon borrowers’ properties. Exhibit M.

1.6 But even setting aside for the moment the unenforceability of these form deed of trust provisions, the form deed of trust provisions as written do not permit Safeguard’s damage to, destruction of, or removal of borrowers’ property, and/or denial of the full use and

1 enjoyment of borrowers' real and/or personal property prior to the completion of foreclosure.

2       1.7     Yet, Safeguard has a common course of conduct whereby it wrongfully and  
3 forcibly enters borrowers' properties prior to completion of a foreclosure to perform destructive  
4 and disruptive acts, including destroying the existing lock(s) on a borrower's home, removing  
5 the borrower's destroyed locks from the home, damaging property inside the home, and  
6 removing the borrower's personal property from the home.  
7

8       1.8     These actions result in damage to the borrower's real and personal property,  
9 removal of the borrower's personal property, and interference with the borrower's full use and  
10 enjoyment of their real and personal property.

11       1.9     Safeguard conducts these actions and this common course of conduct by and  
12 through property preservation and property inspection vendors, which vendors enter properties  
13 and conduct property preservation services on Safeguard's behalf.  
14

15       1.10    Safeguard's vendors are subject to Safeguard's comprehensive policies that  
16 regulate most aspects of the vendor's relationship with Safeguard, including its activities  
17 conducting property preservation and other property-related services.

18       1.11    Safeguard purportedly instructs its property preservation vendors that they may  
19 not remove any non-hazardous personal property from properties prior to the completion of any  
20 foreclosure during pre-foreclosure property entries.  
21

22       1.12    Safeguard's common course of conduct and actions are widespread throughout  
23 Washington. Safeguard recently reported that, between October 2011 and October 2015, there  
24 were "53,467 properties in Washington that Safeguard might have entered during that time  
25 period," and of the borrowers who then made claims against Safeguard requesting  
26 compensation for damaged properties, "No claimant in that time period demanded less than  
27

1 \$1,000. More than 85 percent of the claimants demanded more than \$1,000. More than 75  
 2 percent demanded \$1,500 or more. More than 50 percent of the claimants demanded more than  
 3 \$3,500.” Exhibit L.

4 1.13 Thus, not only does Safeguard have no legal right to be present on borrowers’  
 5 properties in advance of the completion of any foreclosure proceedings, but Safeguard regularly  
 6 acts beyond the scope of the unenforceable and illegal form deed of trust provisions relied upon  
 7 by Safeguard.  
 8

9 1.14 Safeguard’s common course of conduct and common practices constitute  
 10 common law trespass, intentional trespass, negligent trespass, negligent supervision, and  
 11 violate Washington’s Consumer Protection Act (“CPA”) (RCW 19.86, *et seq.*), all in violation  
 12 of Washington State law.  
 13

## 14 II. PARTIES

15 2.1 Representative Plaintiff John Bund. JOHN R. BUND II (“Mr. Bund”), an  
 16 individual, is the Executor of the Estate of Richard C. Bund, deceased (the “Estate”).

17 2.2 The Estate owns the real property located at 2485 Timaru Lane, Oak Harbor,  
 18 Washington (the “Bund Property”).

19 2.3 The Estate has agreed to act as Class representative in this matter as “Plaintiff  
 20 Bund” or “Representative Plaintiff Bund.”  
 21

22 2.4 Representative Plaintiffs S. Scott James and Noel L. James. S. SCOTT JAMES  
 23 and NOEL L. JAMES (collectively, “the Jameses”) are a married couple who owned real  
 24 property located at 1005 Harvard Avenue, Wenatchee, Washington (the “James Property”).

25 2.5 The Jameses have agreed to act as Class representatives in this matter as  
 26 “Plaintiffs James” or “Representative Plaintiffs James.”  
 27



1 foreclosure has been initiated, but not completed.

2 4.3 “Foreclosed properties” shall refer to properties that have had a judicial or non-  
3 judicial foreclosure completed and a foreclosure and sale at law has been completed.

4 **Safeguard’s Unfair and Deceptive Business Practices**

5 4.4 On its website, Safeguard advertises its services to potential clients as follows:

6  
7 Safeguard leads the industry in delivering a full spectrum of  
8 inspection, maintenance, preservation, property registration,  
9 repairs and rehab services on vacant, defaulted and foreclosed  
10 properties.

11 What distinguishes Safeguard is our commitment to delivering  
12 excellent customer service and performing at the highest levels  
13 of quality, timeliness and cost-effectiveness. Our investment in  
14 technology supports that commitment, with faster and more  
15 accurate property updates and data-gathering capabilities that  
16 inform our clients’ and our own decision-making processes.

17 Through a process of ongoing training and rigorous quality  
18 control, both for our national vendor network and our internal  
19 staff, we measure and monitor all aspects of service delivery to  
20 assure that we continuously meet or exceed industry guidelines  
21 and client expectations.

22 [www.safeguardproperties.com/services.aspx](http://www.safeguardproperties.com/services.aspx) (last accessed May 23, 2016)

23 4.5 Safeguard provides to mortgage lenders and servicers property inspection and  
24 preservation services for delinquent, pre-foreclosure, and foreclosed properties.

25 4.6 All borrowers’ upon whose property Safeguard enters are subject to  
26 substantively the same form Entry Provision that Safeguard relies upon to: (i) enter borrowers’  
27 properties in the event of default but prior to completion of foreclosure; and (ii) conduct its  
illegal services.

4.7 As will be further explained, on July 7, 2016, in *Jordan v. Nationstar Mortgage, LLC*, No. 92081-8, the Washington State Supreme Court held such form Entry Provisions

1 unenforceable as contrary to Washington State law, thereby eroding any purported legal  
 2 justification for Safeguard's entry onto borrowers' properties, forcible entry into the borrowers'  
 3 homes, removal of borrowers' locks, installation of Safeguard's lock and lock boxes, damage  
 4 to borrowers' homes, and removal of borrowers' personal property prior to the completion of  
 5 foreclosure. Exhibit M.

7 **Safeguard's Retention of Subcontractors**

8 4.8 Safeguard's involvement with a residential property usually begins once a  
 9 homeowner becomes delinquent or defaults on his or her mortgage.

10 4.9 Upon that occurrence, Safeguard is retained by a lending or servicing institution  
 11 to perform inspection and preservation services on the home.

12 4.10 Safeguard performs such services through a network of subcontractors trained  
 13 and supervised by Safeguard via a common set of practices.

14 4.11 Upon a Washington borrower's delinquency or default, Safeguard will instruct  
 15 a Washington subcontractor to inspect the home to determine its occupancy status.

16 4.12 Safeguard does not instruct its vendors on making determinations or distinctions  
 17 between "vacant" homes versus "abandoned" homes.

18 4.13 Once the home is deemed "vacant" or "abandoned," Safeguard instructs its  
 19 subcontractors to forcibly enter the home and perform services, such as securing the home by  
 20 boarding up the doorway or windows, turning off utilities to the home, and placing lockboxes  
 21 or padlocks on the doors to the home.

22 4.14 Such common instructions also include that the subcontractor should forcibly  
 23 enter the home to perform destructive acts, including destroying and removing existing lock(s)  
 24 on a home, damaging doors or smashing windows if necessary for entry, and removing personal  
 25  
 26  
 27

1 property found in the home.

2       4.15 These common actions result in damage to the borrower's real and personal  
3 property, interference with the borrower's full use and enjoyment of the home, removal of  
4 personal property located within the home, and they exceed the scope of any form deed of trust  
5 provision relied upon by Safeguard when instructing its agents to conduct preservation services  
6 upon a borrower's home.

7  
8       4.16 Subcontractors perform these services as agents of Safeguard and pursuant to  
9 specific common orders and directives from Safeguard.

10       4.17 Safeguard promulgates and utilizes extensive and comprehensive policies,  
11 procedures, and manuals to regulate its vendors' conduct. It retains the right to control every  
12 aspect of its vendors' work. For example, among other things, Safeguard's policies and  
13 procedures purport to control each vendor's geographic area, the training of those vendors, the  
14 details of each work order (including what tools are needed, what vendors can and cannot wear,  
15 and when the work must be completed), as well as how the vendors respond to complaints and  
16 speak to homeowners or third parties. Safeguard requires each vendor immediately submit a  
17 comprehensive report upon completing each work order; every report is reviewed and vendors  
18 who do not comply with Safeguard's expectations do not get paid. Safeguard's policies and  
19 procedures purportedly prohibit vendors from removing non-hazardous personal property from  
20 borrowers' homes prior to the completion of any foreclosure, unless specifically ordered to do  
21 so by Safeguard.

22  
23  
24       4.18 Despite extensive use of vendors and Safeguard's comprehensive policies,  
25 procedures, and manuals, and despite having the right to control nearly every facet of vendor  
26 behavior, Safeguard has no common practice of adequately training or supervising its  
27



1 subcontractors to ensure compliance with its policies and procedures governing property-  
2 related activities conducted by subcontractors for Safeguard.

3 4.19 Safeguard, likewise, has no common practice of screening its subcontractors'  
4 employees by way of reviewing qualifications or performing a background check that would  
5 uncover any criminal history.  
6

7 **Safeguard's Process for Determining Occupancy Status and Securing Default and Pre-**  
8 **Foreclosure Homes**

9 4.20 Safeguard's process in inspecting and securing a default or pre-foreclosure home  
10 starts when Safeguard orders a subcontractor to determine the occupancy status of the home.

11 4.21 Safeguard does not provide its subcontractors with clear standards for  
12 determining the occupancy status of the home.

13 4.22 Safeguard stresses that subcontractors should make occupancy determinations  
14 quickly.

15 4.23 Safeguard tells its subcontractors that an occupancy status report of "unknown"  
16 is unacceptable and that subcontractors will not be compensated for subsequent inspections to  
17 clarify the occupancy status.  
18

19 4.24 Frequently, Safeguard or its subcontractors inaccurately determine the  
20 occupancy status of a home.

21 4.25 If Safeguard or its subcontractor deems the home vacant or abandoned,  
22 Safeguard orders its subcontractor to gain access to the home by forcibly entering the home  
23 through locked doors or windows.

24 4.26 Safeguard stresses to its subcontractors that the goal is to put the home back on  
25 the market as quickly as possible.  
26

27 4.27 Via its comprehensive policies and procedures, Safeguard forbids its

1 subcontractors from removing any non-hazardous personal property or belongings from the  
2 home during interior entries absent a specific work order from Safeguard to do so. However,  
3 Safeguard's subcontractors often remove some or all personal property from the home anyway.

4  
5 4.28 Once some or all personal property is removed from a borrower's home,  
6 Safeguard does not require its subcontractors to store, preserve, or track the items that were  
7 removed from the borrower's home, and Safeguard does not have any practicing policy or  
8 procedure for returning removed belongings and personal property to borrowers.

9 4.29 Safeguard instructs its subcontractors to place their own locks and lock boxes  
10 on the borrower's home and post a notice upon the borrower's home instructing the borrower  
11 to contact Safeguard for access to the home.

12 4.30 When Safeguard learns that a homeowner wants access to his or her home,  
13 Safeguard does not immediately provide access to the homeowner.

14 4.31 When Safeguard learns that a homeowner wants access to his or her home,  
15 Safeguard does not immediately remove the locks that it had placed on the home.

16 4.32 When Safeguard learns that a homeowner wants access to his or her home,  
17 Safeguard neither restores the homeowner's locks to the home nor returns the locks to the  
18 homeowner.  
19

20 4.33 When Safeguard learns that a homeowner wants the personal property that was  
21 removed from the home returned, Safeguard does not return the personal property.  
22

23 4.34 When Safeguard learns that a homeowner wants to be reimbursed for the value  
24 of the personal property removed from the home, Safeguard has no reasonable or consistent  
25 policy for reimbursing homeowners or ensuring that vendors return missing property.

26 4.35 When Safeguard learns that a homeowner wants the damage to the home  
27

1 repaired, Safeguard does not repair the damage.

2 4.36 Safeguard's common pattern and practice of using subcontractors to forcibly  
3 enter default and pre-foreclosure homes, cause damage to the borrower's real and personal  
4 property, convert the borrower's personal property and belongings located within the home,  
5 and interfere with the borrower's full use and enjoyment of the home prior to completion of a  
6 foreclosure is unlawful and causes injury to Washington residents.

8 **Safeguard's Activities are Widespread**

9 4.37 Safeguard has a widespread common practice of forcible entry, resultant  
10 damage, removal of personal property from homes, and denial of the owner's full use and  
11 enjoyment of their home.

12 4.38 In fact, Safeguard recently reported that, between October 2011 and October  
13 2015, there were "53,467 properties in Washington that Safeguard might have entered during  
14 that time period," and of the borrowers who then made claims against Safeguard requesting  
15 compensation for damaged properties, "No claimant in that time period demanded less than  
16 \$1,000. More than 85 percent of the claimants demanded more than \$1,000. More than 75  
17 percent demanded \$1,500 or more. More than 50 percent of the claimants demanded more than  
18 \$3,500." Exhibit L. Thus, Safeguard's unlawful acts and practices are widespread throughout  
19 Washington State.

21 4.39 Various news reports detail specific examples of Safeguard's common practices.

22 4.40 In a 2012 article, borrowers reported returning home following Safeguard's  
23 forcible entry to find personal possessions smashed with a sledgehammer in the front yard,  
24 damaged china and family photos, a lost coin collection, and even a missing family cat. *See*  
25 Exhibit A.

1           4.41   In 2013, another borrower reported personal property stolen from a home by  
2 Safeguard: “Among the missing items were two shotguns, hunting clothing, an expensive  
3 hunting bow and even family photos that were hanging on the wall.” Exhibit B at p. 4.

4           4.42   Another borrower reported Safeguard’s theft of two dozen VHS tapes of his  
5 daughters as they were growing up. Exhibit C at p. 1.

6           4.43   Still another borrower reported Safeguard shut off his sump pump which caused  
7 flooding in his basement thereby damaging his property. *Id.* at p. 2.

8           4.44   These are just a handful of a long line of similar stories evidencing Safeguard’s  
9 common pattern and practices.

10           4.45   A 2013 article offers further detail into the breadth and depth of Safeguard’s  
11 practices via a detailed account of a former Safeguard’s complaint department employee who  
12 “gained a starkly different perspective on his company’s pursuits as allegations of  
13 incompetence, malevolence and larceny rolled in day after day.” Exhibit B at p. 1. According  
14 to the employee, “[p]eople with legal title to their property called to complain that Safeguard  
15 contractors had broken into their homes and carted off family heirlooms, valuable artwork and  
16 weapons . . . . People living next door to foreclosed properties complained that Safeguard  
17 mixed up addresses and locked them out of their own homes.” *Id.* at pp. 1-2.

18           4.46   As for Safeguard’s practice for responding to consumer complaints:

19                   [The employee] said . . . [t]he most common strategy . . . was to  
20 stall – ignore the claim for as long as possible with the hope that  
21 the person who called in would give up. “We would wear them  
22 down with paperwork and make them go away,” he said.

23           *Id.* at p. 3.

24           4.47   A 2013 news article summarized the lack of screening performed by Safeguard  
25 to ensure its subcontractors employ reputable and qualified individuals:

1 Many of the contractors willing to engage in the dirty work of  
 2 cleaning and repairing these homes have landed there by way of  
 3 joblessness – among them laid-off loan officers and other  
 mortgage industry refugees striving to make an honest living in  
 a bad economy.

4 Others are felons or cheats drawn to a sector that boomed after  
 5 the housing bubble popped, seeking opportunity in an industry  
 6 with a history of underpaying its workers and neglecting  
 7 background checks. Fierce competition among the businesses  
 that hire these contractors and weak supervision by banks and  
 8 federal agencies have prompted some workers to take shortcuts  
 and to do work they are not licensed to do.

9 Exhibit D at p. 3.

10 4.48 It appears that Safeguard's long history of illegal acts and common practices  
 11 nationwide is beginning to catch up to the company. A December 11, 2013, article uncovered  
 12 68 federal lawsuits filed against Safeguard in 27 separate states. Exhibit C at p. 1.

13 **The Illinois Attorney General's Action Against Safeguard**

14 4.49 In September 2013, Safeguard was sued by the Attorney General's Office of the  
 15 State of Illinois for the same unfair and deceptive business practices injurious to consumers  
 16 targeted by the present action. *See* Exhibit E.

17 4.50 In the Complaint, the Illinois Attorney General explained specific examples of  
 18 Safeguard's unlawful conduct (*id.* at ¶¶ 33-68), including the following:

19 4.50.1 "The Illinois Attorney General's Office is aware of over 200 complaints  
 20 from Illinois consumers against Safeguard concerning the removal of personal property." *Id.*  
 21 at ¶ 52.

22 4.50.2 "In at least one instance, Safeguard's subcontractor removed vital  
 23 medical supplies, including the tenant's asthma pumps, from a legally-occupied home." *Id.* at  
 24 ¶ 64.

1 4.50.3 In another instance, Safeguard broke down a door with a sledgehammer  
2 and left it off the hinges upon departing. *Id.* at ¶¶ 93, 96, 99-100.

3 4.50.4 In another, Safeguard broke a back window to gain entry to a residence.  
4 *Id.* at ¶ 118.

5 4.50.5 And in still another instance, Safeguard shattered a borrower's glass  
6 shower door while performing so-called preservation services. *Id.* at ¶ 128.

7  
8 4.51 In an article about the lawsuit, Illinois Attorney General Lisa Madigan was  
9 quoted as follows: "This case shows the lengths that banks and their service providers will go  
10 to abuse and intimidate borrowers in foreclosure[.] . . . This company [Safeguard] was illegally  
11 breaking into people's homes, removing all their possessions and locking them out. It is a  
12 homeowner's worst nightmare." Exhibit F.

13  
14 4.52 The Illinois AG action resulted in a settlement whereby Safeguard agreed to pay  
15 \$1,000,000, nearly all of which was paid to Illinois residents who filed complaints over  
16 Safeguard's practices. Exhibit G.

17 4.53 Under the settlement, Safeguard also agreed to "follow 40 operating standards  
18 in conducting inspections and other services relating to Illinois properties set by Madigan's  
19 office to ensure homeowners' rights are protected." *Id.* These standards included the following:

- 20  
21 (a) "Inspectors must support their inspections with photographs and an  
22 affidavit;"
- 23 (b) "The company must increase its oversight and quality control of its  
24 subcontractors;"
- 25 (c) "Safeguard must maintain a 24-hour hotline for fielding consumer  
26 complaints;" and  
27

1 (d) “The company is prohibited from removing non-perishable and non-  
2 hazardous personal property prior to foreclosure unless it has a court order,  
3 and if Safeguard makes a mistake, it must restore a consumer’s possession  
4 of the home, restore utility service, and return or reimburse any personal  
5 property that has been removed.”  
6

7 *Id.*

8 4.54 Remarking on the settlement, Illinois AG Madigan commented: “I am pleased  
9 that this settlement will provide some compensation for the nightmare they caused these  
10 homeowners and that it will ensure that Safeguard does not employ these brazen practices  
11 moving forward.” *Id.*  
12

13 **The Maryland Attorney General’s Action Against Safeguard**

14 4.55 Following the Illinois AG action, the Maryland Attorney General sued  
15 Safeguard for the same wrongful conduct perpetrated against Maryland residents.

16 4.56 On August 28, 2015, Maryland Attorney General Brian Frosh announced a  
17 settlement with Safeguard “resolving claims that the company’s inadequate policies and  
18 procedures resulted in Marylanders being wrongfully locked out of their homes or having their  
19 property damaged and belongings taken.” *See Exhibit H.*  
20

21 4.57 In the lawsuit, the Maryland Attorney General Consumer Protection Division  
22 “alleged that Safeguard failed to properly screen, train and supervise its network of vendors  
23 who perform inspection and preservation work in Maryland. Consumers have made hundreds  
24 of complaints to Safeguard about improper conduct at their homes by Safeguard agents.” *Id.*

25 4.58 Under the settlement, Safeguard agreed to pay \$167,000 in restitution to  
26 Maryland residents harmed by the challenged actions, and to enact specific reforms including  
27

1 the following:

- 2 (a) “Implementing stringent background check requirements for employees and  
3 vendor agents, including evaluating prior misdemeanor convictions and  
4 prohibiting work by those with felony convictions;”  
5  
6 (b) “Assuring its vendors that they will not be penalized if they report in good  
7 faith that they don’t know whether a property is occupied;”  
8  
9 (c) “Prohibiting the removal of non-hazardous personal property prior to  
10 foreclosure, except pursuant to court order;”  
11  
12 (d) Employing appropriate personnel to supervise and audit its Maryland  
13 vendors to ensure compliance with the settlement;” and  
14  
15 (e) “Maintaining records of all Maryland consumer complaints and, after notice,  
16 recording all calls from Maryland consumers to Safeguard’s toll free  
17 consumer hotline.”

16 *Id.*

17 ***The Washington Supreme Court’s Decision Invalidating the Deed of Trust Provisions in***  
18 ***Jordan v. Nationstar Mortgage, LLC, No. 92081-8***

19 4.59 In 2012, a lawsuit entitled *Jordan v. Nationstar Mortgage, LLC*, was filed in  
20 Washington State Superior Court in Chelan County under Cause No. 12-2-00385-2. This  
21 lawsuit challenged the legality and enforceability of the form deed of trust entry provisions  
22 relied upon by mortgage lenders and servicers to enter borrowers’ homes and “secure” their  
23 properties upon default, abandonment, or vacancy. See Exhibit I.

24 4.60 Following the grant of class certification in 2014, counsel for Nationstar  
25 removed the Complaint to the United States District Court for the Eastern District of  
26 Washington, where it was assigned to the Hon. Thomas O. Rice under Cause No. 2:14-cv-  
27



1 00175-TOR.

2 4.61 In 2015, the parties filed cross-motions for partial summary judgment, and on  
 3 August 10, 2015, Judge Rice issued an Order Certifying Questions to Washington Supreme  
 4 Court on the following bases:

5  
 6 Put succinctly, this Court has been asked to decide whether so-  
 7 called Entry Provisions within the deeds of trust of Plaintiff and  
 8 other class members are enforceable under Washington law  
 9 absent post-default consent of the borrower or permission from a  
 10 court. Nationstar contends the Provisions—akin to a limited  
 11 license or similar non-possessory interest in land—merely grant  
 12 the lender the ability to enter, maintain, and secure the  
 13 encumbered property and that such conduct does not constitute  
 14 possession in violation of Washington’s lien theory of  
 15 mortgages. Ms. Jordan, on the other hand, contends the Entry  
 16 Provisions unlawfully deprive a borrower of her exclusive right  
 17 to possession prior to foreclosure and that the borrower cannot  
 18 agree by contract to relinquish such right prior to default.  
 19 Instead, Ms. Jordan asserts that the lender either must obtain  
 20 post-default consent of the borrower or a court-appointed  
 21 receiver pursuant to RCW chapter 7.60.

22 Because of the complexity of the state law issues presented in the  
 23 parties’ cross-motions for partial summary judgment and their  
 24 significant policy implications, this Court finds that the  
 25 Washington Supreme Court, which has not had occasion to settle  
 26 these issues, “is better qualified to answer the certified questions  
 27 in the first instance.” . . . Further, this Court finds the Washington  
 Supreme Court’s answers are “necessary . . . in order to dispose  
 of [this] proceeding.”

28 Exhibit J at pp. 3-4 (internal citations omitted).

29 4.62 Judge Rice then certified, *inter alia*, the following question of law to the  
 30 Washington Supreme Court:

31 Under Washington’s lien theory of mortgages and RCW  
 32 7.28.230(1), can a borrower and lender enter into a contractual  
 33 agreement prior to default that allows the lender to enter,  
 34 maintain, and secure the encumbered property prior to  
 35 foreclosure?

1 *Id.* at p. 10.

2 4.63 On August 18, 2015, the Washington Supreme Court sent a letter accepting  
3 Judge Rice's Order Certifying Questions under Supreme Court No. 92081-8, and set a briefing  
4 schedule for the parties. Exhibit K.

5 4.64 The parties timely submitted their briefs, and oral argument took place before  
6 the Washington Supreme Court on January 19, 2016.

7 4.65 On July 7, 2016, the Washington Supreme Court issued its *En Banc* Opinion in  
8 *Jordan v. Nationstar Mortgage, LLC*, No. 92081-8, answering "the first certified question in  
9 the negative." Exhibit M at p. 6. The Court explained, "Our case law is clear that Washington  
10 law prohibits a lender from taking possession of property before foreclosure of the borrower's  
11 home." *Id.* at p. 8. The Court concluded that the deed of trust Entry Provisions allow the lender  
12 to take possession of the borrower's home in advance of the conclusion of a foreclosure of the  
13 borrower's home:  
14  
15

16 From any approach, we find that Nationstar's conduct constituted  
17 possession. . . . Nationstar's vendor's actions constituted  
18 possession because its actions are representative of control. The  
19 vendor drilled out Jordan's existing locks and replaced the lock  
20 with its own. . . . [A]lthough [Jordan] was able to obtain a key  
21 by calling, the process made Nationstar the "middle man." She  
22 could no longer access her home without going through  
23 Nationstar. . . . Nationstar effectively ousted Jordan by changing  
24 her locks, exercising control over the property. . . . Changing the  
25 locks is akin to exercising control, which is the key element of  
26 possession. By changing the locks, Nationstar took possession  
of the property. Since these actions are authorized by the entry  
provisions, the entry provisions allow the lender to take  
possession of the property. Because Washington law prohibits  
lenders from taking possession of the borrower's property before  
foreclosure, the provisions are in conflict with state law.  
Therefore, we must answer the first certified question in the  
negative and find that the entry provisions are unenforceable.

27 *Id.* at pp. 12-14.

1           4.66    The Court concluded: “[T]he entry provisions are in direct conflict with state  
2 law and are unenforceable.” *Id.* at p. 20.

3           4.67    Based on *Jordan*, Safeguard has no legal right to engage in its common practice  
4 of forcible entry into pre-foreclosure homes, damage to borrowers’ real and person property,  
5 removal of borrowers’ personal property and belongings located within the home, and  
6 interference with borrowers’ full use and enjoyment of their properties prior to the completion  
7 of a foreclosure.  
8

## 9                                   **V.       REPRESENTATIVE PLAINTIFFS**

10           5.1    The Representative Plaintiffs are just several examples of Safeguard’s common  
11 pattern and practice of unlawfully entering upon borrowers’ properties in advance of any  
12 foreclosure proceedings, damaging borrowers’ real property, converting borrowers’ personal  
13 property, and denying borrowers’ the full use and enjoyment of their property prior to  
14 completion of a foreclosure.  
15

### 16                                   **Representative Plaintiff John Bund**

17           5.2    Mr. Bund is Executor of the Estate of Richard C. Bund, which Estate owns the  
18 Bund Property at 2485 Timaru Lane, Oak Harbor, Washington.

19           5.3    Mr. Bund, as Executor, stands in the shoes of the Estate as the owner of the  
20 Property and has standing to bring this litigation on behalf of the Estate. *See* RCW 11.48.010  
21 (“The personal representative shall be authorized in his or her own name to maintain and  
22 prosecute such actions as pertain to the management and settlement of the estate, and may  
23 institute suit to collect any debts due the estate or to recover any property, real or personal, or  
24 for trespass of any kind or character.”); RCW 11.48.090 (“Actions for the recovery of any  
25 property or for the possession thereof, and all actions founded upon contracts, may be  
26  
27

1 maintained by and against personal representatives in all cases in which the same might have  
 2 been maintained by and against their respective testators or intestates.”); *see also, e.g.,*  
 3 *Davenport v. Elliott Bay Plywood Machines Co.*, 30 Wash. App. 152, 155, 632 P.2d 76 (1981)  
 4 (the personal representative of an estate has the “right to possession and control of all of the  
 5 estate property”); *Collins v. Northwest Cas. Co.*, 180 Wash. 347, 351, 39 P.2d 986 (1935)  
 6 (internal quotation marks omitted) (“It is the settled law of this state that executors and  
 7 administrators are entitled to possession and control of the property both real and personal of  
 8 estates while being administered by them, as against heirs and devisees as well as all other  
 9 persons.”).

11           5.4     Mr. Bund was Executor of the Estate when the Bund Property was entered upon  
 12 by Safeguard.

14           5.5     At the time of the entry, the loan securing the Bund Property was in default, but  
 15 no foreclosure proceedings had been initiated.

16           5.6     At the time of the entry, the form deed of trust Entry Provision purporting to  
 17 authorize Safeguard’s presence on the Bund Property in the event of default was unenforceable  
 18 as contrary to Washington State law, pursuant to *Jordan v. Nationstar Mortgage*.

19           5.7     At the time of the entry, Mr. Bund was in daily communication with the lender  
 20 for the Bund Property.

22           5.8     At the time of the entry, the Bund Property was neither vacant nor abandoned.

23           5.9     To gain entry to the Bund Property, Safeguard damaged the Bund Property,  
 24 including damaging a lock, door, and shed latch on the Bund Property.

25           5.10    While on the Bund Property, Safeguard changed the locks and placed a lock-box  
 26 upon the Bund Property. Safeguard also removed personal property from the Bund Property,  
 27

1 including the lock that was originally on the garage man door, adjacent to the garage vehicle  
2 door.

3           5.11 Before leaving, Safeguard left a sticker on the garage man door of the Bund  
4 Property directing the owner to call Safeguard's phone number for access to the Bund Property  
5 and additional information.  
6

7           5.12 Upon returning to the Bund Property several days later, Mr. Bund discovered  
8 the Bund Property had been entered upon and the locks had been changed. His key would not  
9 open the lock to the door, and he could not access the interior of the house, garage, or shed.

10           5.13 Mr. Bund called the number for Safeguard written on the sticker. The Safeguard  
11 agent who answered Mr. Bund's call told him to call the lender, and then hung up without  
12 further discussion.  
13

14           5.14 Additional phone calls by Mr. Bund to Safeguard were received with equal  
15 insensitivity and Mr. Bund was not given access to the Bund Property at that time.

16           5.15 Safeguard did not remove its locks or lock box from the Bund Property, despite  
17 being contacted by Mr. Bund.

18           5.16 Safeguard did not return or replace the original locks upon the Bund Property  
19 despite being contacted by Mr. Bund.  
20

21           5.17 Rather, Mr. Bund was later provided a key to enter to the residence on the Bund  
22 Property, but he was told to leave it in the lock box on the door upon leaving.

23           5.18 Upon entering the home, Mr. Bund discovered the home had been damaged from  
24 Safeguard's entry, and personal property was missing.

25           5.19 Mr. Bund reported the missing items and the damage to Safeguard and requested  
26 return of the missing property and reimbursement and/or repairs to the damaged property.  
27

1           5.20   Safeguard refused to return the missing property, to reimburse the Estate, or to  
2 repair the damaged property.

3           5.21   To date, Safeguard has not repaired the damage it caused to the Bund Property  
4 and has not reimbursed the Estate for the costs to repair such damage or the lost rental value  
5 during the time the Estate was denied the full use and enjoyment of its real and/or personal  
6 property.  
7

8           5.22   Safeguard received revenue from its lender/investor client as a result of the  
9 property preservation activities it conducted on the Bund Property.

10          5.23   Safeguard has not returned or paid for the personal property it removed from the  
11 Bund Property.

12          5.24   The exact value of the personal property removed from the Bund Property is  
13 unknown at this time, but is believed to exceed \$600.00.  
14

15          5.25   The exact value of the damage to the Bund Property is unknown at this time, but  
16 multiple doors and locks suffered damage.

17          5.26   The exact value of the precluded rents arising from the denial of the full use and  
18 enjoyment of the Estate's real and/or personal property is unknown at this time.

19          5.27   On information and belief, the actions and inactions alleged above are part of  
20 Safeguard's common business acts and practices.  
21

22                           **Representative Plaintiffs S. Scott and Noel James**

23          5.28   The Jameses owned the James Property located at 1005 Harvard Avenue,  
24 Wenatchee, Washington.

25          5.29   During the period of the Jameses' ownership, the James Property was entered  
26 upon by Safeguard.  
27

1           5.30    At the time of the entry, the loan securing the James Property was in default, but  
2 foreclosure proceedings had not concluded.

3           5.31    At the time of the entry, the form deed of trust provision purporting to authorize  
4 Safeguard's presence on the James Property in the event of default was unenforceable as  
5 contrary to Washington State Law, pursuant to the *Jordan* Decision.  
6

7           5.32    At the time of the entry, the James property was not abandoned and contained  
8 some of the Jameses' personal belongings.

9           5.33    Safeguard damaged the James Property in order to gain entry to the James  
10 Property, including by damaging the door and a lock on the door of the James Property.

11           5.34    While on the James Property, Safeguard changed the locks on the front door and  
12 carport door and installed lock boxes on each door.  
13

14           5.35    Upon returning to the Jameses' Property thereafter, the Jameses discovered that  
15 their property had been entered upon, and their locks had been changed. As a result, the Jameses  
16 believed that they were no longer lawfully entitled to possess or enter their home and never  
17 entered their home thereafter.

18           5.36    By looking through the windows, the Jameses learned that their personal  
19 property, including their chop saw and reciprocating saw, had been removed from the James  
20 Property during the entry.  
21

22           5.37    To this date, Safeguard has not reimbursed the Jameses for the damage to their  
23 real property or compensated them for the denial of the full use and enjoyment of their real  
24 property. Safeguard has not returned the Jameses' missing personal property or compensated  
25 them for that property.

26           5.38    The exact value of the damage to the James Property is unknown at this time.  
27

1           5.39    The exact value of the loss to personal property is unknown at the time but is  
2 believed to exceed \$500.

3           5.40    The exact value of the denial of the full use and enjoyment of the Jameses' real  
4 property is unknown at this time.

5  
6                   **VI.       PROPRIETY OF CLASS ACTION PROSECUTION**

7                               **Proposed Class Definition**

8           6.1    The members of the proposed Class include all Citizens of Washington State:

9                   (a) who own or owned real property in Washington State subject to a loan that  
10                       was in default;

11                   (b) which property, within the applicable statute of limitations, was entered  
12                       upon by Safeguard and/or its agents prior to the completion of any judicial  
13                       or non-judicial foreclosure; and

14                   (c) which entry upon the property by Safeguard was the proximate cause of  
15                       damage to the homeowner by:

16                               (i)     damaging the homeowner's real or personal property; and/or

17                               (ii)    converting the homeowner's personal property or belongings;  
18                               and/or

19                               (iii)   interfering with the homeowner's full use and enjoyment of the  
20                               home.

21                               **CR 23(a)(1): Numerosity**

22  
23  
24           6.2    The exact number of persons and/or entities similarly situated to the  
25 Representative Plaintiffs is currently unknown.

26           6.3    However, Safeguard recently reported that, between October 2011 and October  
27



1 2015, there were “53,467 properties in Washington that Safeguard might have entered during  
 2 that time period,” and of the borrowers who then made claims against Safeguard requesting  
 3 compensation for damaged properties, “No claimant in that time period demanded less than  
 4 \$1,000. More than 85 percent of the claimants demanded more than \$1,000. More than 75  
 5 percent demanded \$1,500 or more. More than 50 percent of the claimants demanded more than  
 6 \$3,500.” Exhibit L. Thus, Safeguard’s unlawful acts and practices are widespread throughout  
 7 Washington State.  
 8

9 6.4 In addition, Safeguard holds itself out as the largest mortgage field services  
 10 company in the country.

11 6.5 For these reasons, it is estimated that the number of persons similarly situated to  
 12 the Representative Plaintiffs number in the tens of thousands; therefore, joinder of each  
 13 individual proposed Class Member is impracticable.  
 14

15 6.6 In addition, the exact number of persons similarly situated to the Representative  
 16 Plaintiffs may be identified from Safeguard’s records of residences serviced in Washington  
 17 State during the applicable statute of limitations, and such persons may be identified with  
 18 particularity through appropriate judicial discovery procedures, such that it would be possible  
 19 to give such persons actual notice of these proceedings, if required.  
 20

21 **CR 23(a)(2): Commonality**

22 6.7 There are questions of law and fact common among the claims of the proposed  
 23 Class Members, including but not limited to:

- 24 (a) the common actions Safeguard takes on the proposed Class Members’  
 25 properties prior to completion of foreclosure;  
 26 (b) Safeguard’s common policies or practices vis-à-vis actions it takes upon the  
 27

- 1 proposed Class Members' properties;
- 2 (c) Safeguard's common policies or practices for hiring agents to perform the
- 3 actions it takes upon the proposed Class Members' properties;
- 4 (d) the manner in which Safeguard instructs or trains its agents that take action
- 5 upon the proposed Class Members' properties;
- 6 (e) the level of supervision offered by Safeguard over its agents who take action
- 7 on the proposed Class Members' properties.
- 8

9 6.8 Additional common questions of law and fact are addressed below under *CR*

10 *23(b)(3): Predominance.*

11 **CR 23(a)(3): Typicality**

12 6.9 The claims of the Representative Plaintiffs are typical of the claims of the Class.

13 6.10 As to Representative Plaintiff Bund, Mr. Bund is the Executor of the Estate. As

14 Executor, Mr. Bund stands in the shoes of the Property owner. *See, e.g.,* RCW 11.48.010; RCW

15 11.48.090; *Davenport*, 30 Wash. App. at 155; *Collins*, 180 Wash. at 351.

16 6.11 Likewise, Representative Plaintiffs James owned the James Property at the time

17 it was entered upon by Safeguard.

18 6.12 As such, the Estate via Representative Plaintiff Bund, Representative Plaintiffs

19 James, and all Members of the Class own or owned real property in Washington State, who,

20 prior to completion of any judicial or non-judicial foreclosure, had their property entered upon

21 by Safeguard or its agents for purposes of conducting property preservation services upon their

22 property, had their real or personal property located thereon damaged and/or removed by

23 Safeguard or its agents, and were denied the full use and enjoyment of their real and/or personal

24 property by Safeguard or its agents.

25

26

27

1           6.13 As a result, the Estate via Representative Plaintiff Bund, Representative  
 2 Plaintiffs James, and all putative Class Members have been damaged by Safeguard's actions,  
 3 which actions constitute common violations of laws enacted for the protection of Washington  
 4 State citizens.

5           6.14 Furthermore, Safeguard's defenses to the claims of the Estate via Representative  
 6 Plaintiff Bund, Representative Plaintiffs James, and the proposed Class Members will be  
 7 identical due to: (i) Safeguard's reliance on a form of deed of trust provision purporting to  
 8 allow so-called preservation services; and (ii) Safeguard's common policies and practices vis-  
 9 à-vis its retention and supervision of subcontractors, performance of preservation services,  
 10 scope of preservation services performed, its response to consumer complaints, and its response  
 11 to borrower requests for repair to and return of their property and requests for restoration of full  
 12 and unfettered access to their property.

13           6.15 In short, because all claims implicate common facts and questions of law,  
 14 Safeguard's defenses will too.

15  
 16  
 17 **CR 23(a)(4): Adequacy of Representation**

18           6.16 The Estate via Mr. Bund and Representative Plaintiffs James will fairly and  
 19 adequately protect the interests of the Class.

20           6.16.1 The Representative Plaintiffs come before this Court as owners of  
 21 Property that has been trespassed upon, damaged, converted, and interfered with.

22           6.16.2 The Representative Plaintiffs are in the same capacity as any other  
 23 litigant seeking redress for grievances and class relief for the harm which has occurred.

24           6.16.3 The Representative Plaintiffs do not have any interests which are  
 25 antagonistic to those of the Class and are ready and willing to bring this class action in a  
 26  
 27

1 representative capacity on behalf of the proposed Class.

2           6.17 Plaintiff's counsel will fairly and adequately prosecute the case on behalf of the  
3 proposed Class.

4           6.17.1 Attorneys Jeffers, Danielson, Sonn & Aylward, P.S., are experienced  
5 trial attorneys who have engaged in extensive trial practice and have considerable experience  
6 in all aspects of class action litigation from several other class action cases.

7           6.17.2 Plaintiff's counsel have the necessary skills, expertise, and competency  
8 to adequately represent the Representative Plaintiffs' interests and those of the Class.

9  
10 **CR 23(b)(2): Injunctive Relief**

11           6.18 Safeguard has acted or refused to act on grounds generally applicable to  
12 Plaintiffs and all Class Members, thereby making appropriate final injunctive relief.

13           6.19 As detailed throughout this Fourth Amended Complaint, Safeguard or its agents  
14 have a common practice of entering upon Washington borrowers' properties for purposes of  
15 conducting property preservation services thereupon, damaging or removing borrowers' real  
16 and/or personal property located therein, and denying borrowers the full use and enjoyment of  
17 their real and/or personal property.

18           6.20 Safeguard further has a common practice of not adequately training and  
19 supervising its agents in the performance of so-called property preservation services, and even  
20 instructing its agents to perform certain destructive and disruptive acts.

21           6.21 Safeguard further has a common practice of not repairing, replacing, or  
22 reimbursing borrowers when they report property damage as a result of the above acts.

23           6.22 Safeguard has acted in such manners as applicable to Plaintiffs and all Class  
24 Members.



1 purported authority to enter upon borrowers' properties from unlawful form contract provisions  
 2 applicable to all borrowers' properties. These contract provisions are substantively identical in  
 3 all cases. All such substantively identical form deed of trust provisions were found on July 7,  
 4 2016, to be "in direct conflict with state law and . . . unenforceable" by the Washington Supreme  
 5 Court in *Jordan v. Nationstar Mortgage*. Exhibit M at p. 20. Such provisions are common to  
 6 all putative Class Members and do not involve individualized inquiries.  
 7

8           6.28.2 The Identity of the Property Owner. Still another element subject to  
 9 common proof is the identity of the property owner. As the proposed Class concerns only those  
 10 properties entered upon by Safeguard prior to completion of any judicial or non-judicial  
 11 foreclosure, there are no individual questions concerning the identity of the rightful property  
 12 owner—the borrower owned the property at the time of entry, not anyone else. This is further  
 13 detailed in the *Jordan v. Nationstar Mortgage* opinion, in which the Washington Supreme Court  
 14 reaffirmed the borrower's right to exclusive possession of the property prior to the completion  
 15 of any foreclosure proceedings. Exhibit M.  
 16

17           6.28.3 Safeguard's Relationship with its Subcontractors. Plaintiffs will be able  
 18 to establish the elements of their claims using evidence common to the Class because the  
 19 primary inquiries involve *Safeguard's* conduct. That is, Safeguard has a common policy and  
 20 practice of training and instructing its agents to enter properties prior to completion of any  
 21 foreclosure. Safeguard further instructs its agents to use whatever means necessary to enter  
 22 properties, including drilling out the borrower's locks, and, once inside, agents are trained and  
 23 instructed to, *inter alia*, "trash out" the premises by taking and carrying away personal property  
 24 found therein. Thus, evidence common to all Members of the Class includes: Safeguard's  
 25 selection of subcontractors and screening of employees; Safeguard's training of subcontractors;  
 26  
 27

1 Safeguard's instructions to its subcontractors; and Safeguard's oversight of its subcontractors'  
 2 work. This theory is common to all putative Class Members and does not involve  
 3 individualized inquiries.

4  
 5 6.28.4 The Conduct of Safeguard's Subcontractors in Entering and Damaging  
 6 or Converting Borrowers' Property. Plaintiffs will be able to establish the elements of their  
 7 claims using evidence common to the Class because, as to all putative Class Members,  
 8 Safeguard's subcontractors acted similarly while on borrowers' properties; namely, they  
 9 committed unauthorized entry upon borrowers' properties, conducted unlawful forcible entries  
 10 involving damage to existing locks, doors and/or windows, damaged and converted personal  
 11 property found thereon, and interfered with borrowers' full use and enjoyment of their property.  
 12 This theory is common to all putative Class Members and does not involve individualized  
 13 inquiries.

14  
 15 6.28.5 Safeguard's Policies and Procedures for Responding to Customer  
 16 Complaints. Plaintiffs will be able to establish the elements of their claims using evidence  
 17 common to the Class because Safeguard's policies and procedures for responding to customer  
 18 complaints of its agents' entry, removal of borrowers' property, and interference with  
 19 borrowers' full use and enjoyment of their property are the same in all cases. That is, Safeguard  
 20 does not immediately restore possession of the property to the owner, does not return or replace  
 21 the property's original locks, does not remove its locks from the property upon demand, and  
 22 does not return or replace personal property removed from the property. These facts are  
 23 common to all putative Class Members and do not involve individualized inquiries.

24  
 25 6.28.6 Safeguard's Practices in Response to Complaints Regarding Removal of  
 26 Personal Property. Plaintiffs will be able to establish the elements of their claims using evidence  
 27

1 common to the Class because Safeguard's records demonstrate that it was aware of and received  
 2 hundreds of complaints alleging that Safeguard's vendors unlawfully removed personal  
 3 property. Although Safeguard claims that it never unlawfully authorized its vendors to remove  
 4 personal property from borrowers' homes prior to the completion of foreclosure, these  
 5 complaints, particularly when combined with Safeguard's policies and procedures for  
 6 responding to such complaints demonstrate that Safeguard failed to adequately supervise its  
 7 agents when on borrowers' properties and failed to remedy its vendors' pervasive practice of  
 8 removing personal property from borrowers' homes, even when it became aware of such  
 9 practices. These facts are common to all putative Class Members and do not involve  
 10 individualized inquiries.  
 11

12           6.28.7 Class Members' Damages. Plaintiffs will be able to establish the  
 13 elements of their claims using evidence common to the Class because all putative Class  
 14 Members suffered the same type of damage; namely, injury to real and/or personal property  
 15 from Safeguard's forcible entry, damage to, and/or loss of personal property, restitution in the  
 16 amount of revenue Safeguard generated as a result of such unlawful acts, and interference with  
 17 the full use and enjoyment of the property by the borrower. This fact is common to all putative  
 18 Class Members and will not require individualized inquiries.  
 19

20           6.29 As a result, the prosecution of a class action is superior to other available  
 21 methods for the fair and efficient adjudication of this controversy.  
 22

23           6.30 Individual actions are not likely to seek sufficient damages to warrant assuming  
 24 the cost of litigation. Here, the damages sustained by each putative Class Member are not large,  
 25 generally including damage to doors, windows, and/or personal property within the residence.  
 26 As recently admitted by Safeguard, many putative Class Members made claims against  
 27



1 Safeguard for less than \$3,500. Therefore, each putative Class Member will have difficulty  
 2 maintaining an individual action, and a class action is a superior method to adjudicate their  
 3 claims.

4 6.31 In addition, tens of thousands of individual actions would greatly congest the  
 5 Washington State courts.

6 6.32 A class action is the most cost-effective way for consumers to prevent future  
 7 economic and pecuniary loss to tens of thousands of Washington citizens and members of the  
 8 public at large by Safeguard.

9 6.33 This action is superior to any other available method for the fair and efficient  
 10 adjudication of the controversy.

## 11 12 13 **VII. FIRST CAUSE OF ACTION: COMMON LAW TRESPASS**

14 7.1 Safeguard wrongfully and intentionally entered onto—and directed its agents to  
 15 enter onto—the Bund Property and the James Property, and properties owned by borrowers  
 16 throughout the state of Washington in advance of the conclusion of any foreclosure  
 17 proceedings.

18 7.2 As detailed by the Washington Supreme Court in *Jordan v. Nationstar*  
 19 *Mortgage*, prior to the completion of any foreclosure proceedings, the borrower has the  
 20 exclusive right to possess their property, and Safeguard has no legal right to be there. Exhibit  
 21 M. Therefore, Safeguard's entry upon borrowers' properties is an invasion that affects the  
 22 borrower's interest in the exclusive possession of their property.

23 7.3 Safeguard's intent to invade borrowers' possessory interests is demonstrated by  
 24 its claimed authority purportedly granted in its form deed of trust provisions with lenders and  
 25 loan servicers, which claim to permit such entries in the event of default or abandonment of  
 26  
 27

1 properties—which the Washington Supreme Court recently invalidated.

2       7.4     Such intent to enter is further evidenced by Safeguard’s acts of changing  
3 borrowers’ locks, performance of so-called “preservation services” on borrowers’ properties,  
4 and the notices it left for homeowners to contact Safeguard to obtain entry to their properties.

5       7.5     Safeguard remained on the Bund Property, on the James Property, and on  
6 borrowers’ properties during the period of entry and thereafter by changing the locks and  
7 requiring borrowers to contact Safeguard in order to regain full access to their properties. For  
8 example, even when Mr. Bund contacted Safeguard and requested access to the Property and  
9 removal of the locks, that request was repeatedly denied. Likewise, Safeguard changed the  
10 locks on the James Property, leaving its own lock there. Other borrowers experienced the same  
11 results.  
12

13       7.6     It was reasonably foreseeable that Safeguard’s unauthorized and unlawful  
14 entries onto borrowers’ properties in advance of the conclusion of any foreclosure proceedings  
15 would invade borrowers’ possessory interests in those properties.  
16

17       7.7     As a result of Safeguard’s acts as detailed above, Representative Plaintiffs and  
18 Washington borrowers suffered the damages detailed herein in an amount to be proven at trial.

19                   **VIII. SECOND CAUSE OF ACTION:**  
20                   **INTENTIONAL TRESPASS (RCW 4.24.630)**

21       8.1     Safeguard entered onto the Bund Property, the James Property, and properties  
22 owned by borrowers throughout the state of Washington.

23       8.2     Safeguard intentionally, unreasonably, and forcibly entered onto such  
24 properties, and intentionally and unreasonably damaged or removed property thereon.  
25

26       8.3     For example, Safeguard damaged the lock on the door of the Bund Property,  
27 kept the lock, damaged the garage man door on the Bund Property, removed personal property

1 from the Bund Property, and denied the Estate the full use and enjoyment of the personal  
2 property and the real property.

3       8.4     Likewise, Safeguard damaged the lock on the door of the James Property, kept  
4 the lock, removed personal property from the James Property, and denied Plaintiffs James the  
5 full use and enjoyment of their real and personal property.  
6

7       8.5     Safeguard intended to act in this manner, as evidenced by its instruction to its  
8 subcontractors to engage in these behaviors, and its deliberate acts to engage in these behaviors.

9       8.6     Safeguard knew or had reason to know that it had no authorization to engage in  
10 such behaviors because the form contract provisions relied upon by Safeguard – while unlawful  
11 – nevertheless do not authorize damage to real or personal property, do not authorize removal  
12 of personal property located upon or within a property, and do not authorize interference with  
13 the owner's (or other lawful occupant's) full use and enjoyment of the property.  
14

15       8.7     Safeguard engaged in the above actions wholly without permission of Plaintiffs  
16 or other Washington borrowers.

17       8.8     It was substantially certain that Safeguard's and/or its agents' above-described  
18 actions would damage the Bund Property, the James Property, and the properties of other  
19 Washington borrowers.

20       8.9     Safeguard's actions are part of its common practice relative to countless  
21 Washington borrowers.  
22

23       8.10    As a result, Safeguard wrongfully caused waste or injury to these properties, or  
24 wrongfully injured personal property or improvements to real estate on land.

25       8.11    Safeguard's actions above each constitute separate violations of RCW 4.24.630.

26       8.12    As a direct and proximate result of Safeguard's and/or its agents' violations of  
27

1 RCW 4.24.630, Plaintiffs have suffered damages to their real properties and the personal  
2 property located therein in an amount to be proven at trial.

3 8.13 Safeguard is liable to Plaintiffs for treble the amount of damages caused by its  
4 violations of RCW 4.24.630.

5 8.14 Safeguard is liable to Plaintiffs for their reasonable attorneys' fees and costs  
6 pursuant to RCW 4.24.630.

7 8.15 Safeguard is liable to Plaintiffs for their reasonable attorneys' fees and costs  
8 pursuant to RCW 4.24.630. Safeguard is similarly liable to the tens of thousands of Washington  
9 borrowers who experienced the same or similar wrongs as Plaintiffs.  
10

11 **IX. THIRD CAUSE OF ACTION:**  
12 **NEGLIGENT COMMON LAW TRESPASS**

13 9.1 Trespass occurs when a person intentionally or negligently intrudes onto the  
14 property of another. *Jackass Mt. Ranch v. S. Columbia Basin Irr. Dist.*, 305 P.3d 1108, 1122,  
15 175 Wash. App. 374 (2013).

16 9.2 Safeguard acted negligently when it entered upon the properties of Plaintiffs, or  
17 directed its vendors to enter upon the properties of Plaintiffs, and interfered with their right to  
18 exclusive possession of the properties.

19 9.3 Safeguard is similarly liable to the countless Washington borrowers who  
20 experienced the same or similar wrongs as the Representative Plaintiffs.

21 **X. FOURTH CAUSE OF ACTION:**  
22 **VIOLATION OF CONSUMER PROTECTION ACT (RCW 19.86, *et seq.*)**

23 10.1 Safeguard Engaged in Unfair or Deceptive Acts and Practices.

24 10.1.1 The following actions of Safeguard constitute unfair *and* deceptive acts  
25 and practices for the purposes of RCW 19.86, *et seq.*: Safeguard's common practices of  
26  
27

1 unlawfully entering borrowers' properties in advance of the conclusion of any foreclosure  
 2 proceedings; forcible entries via drilling out existing door locks; keeping the locks; damaging  
 3 doors and windows, removing personal property; refusing to refund, repair, or compensate for  
 4 damage caused and property taken; denying owners or legal occupants the full use and  
 5 enjoyment of their real and/or personal property; and failing to respond or timely respond to  
 6 demands for repairs, return of property, and access to their property.  
 7

8           10.1.2 These acts are unfair because the Washington Supreme Court in *Jordan*  
 9 *v. Nationstar Mortgage* recently deemed such practices a clear violation of Washington state  
 10 law, and the deed of trust provisions purporting to authorize them unenforceable as contrary  
 11 to law. These acts are further unfair because of the unequal bargaining power between the  
 12 individual homeowner or occupant and a large, national company that forcibly enters  
 13 properties, drills out the existing locks, places its own locks on the properties, interferes with  
 14 owners' or legal occupants' full use and enjoyment of the properties, converts personal  
 15 property located upon the properties, and refuses to return or replace damaged or converted  
 16 property to the rightful owner.  
 17

18           10.1.3 These acts are deceptive because when Safeguard performs them, the  
 19 property owner is unaware that they are occurring, and such acts are not authorized via any  
 20 form deed of trust provision.  
 21

22           10.1.4 Safeguard engaged in similar unfair and deceptive acts and practices  
 23 vis-à-vis other Washington borrowers.

24           10.2 Safeguard's Acts Occurred in Trade or Commerce. Safeguard's unfair and  
 25 deceptive acts occurred in trade or commerce because Safeguard is the largest mortgage field  
 26 services company in the country and was servicing the properties at the time of the challenged  
 27

1 acts.

2 10.3 Safeguard's Acts Impact the Public Interest.

3 10.3.1 Safeguard's unfair or deceptive acts impacted the public interest  
4 because they were committed in the course of Safeguard's business, Safeguard advertises  
5 similar services to the public in general, and Safeguard and Plaintiffs and Class Members (as  
6 individual consumers) occupy unequal bargaining positions.  
7

8 10.3.2 Safeguard engages in a course of conduct whereby the same or similar  
9 unfair or deceptive acts are repeated as to borrowers across Washington State. Indeed,  
10 Safeguard reports 53,467 borrowers throughout the state of Washington whose properties may  
11 have been entered upon by Safeguard between October 2011 and October 2015. Exhibit L.  
12

13 10.3.3 There exists a real and substantial potential for repetition of Safeguard's  
14 conduct in the future because Safeguard is the largest mortgage field services company in the  
15 country.

16 10.4 Causation.

17 10.4.1 Causation is satisfied through the common proof that Safeguard's policy  
18 and practice is to instruct its agents to enter borrowers' homes, to do so forcibly, to remove  
19 personal property therefrom, and to place and maintain its own locks and lock boxes on  
20 borrowers' properties.  
21

22 10.4.2 These common instructions proximately cause borrowers' damages  
23 because, *but for* Safeguard's instructions to its agents, there would be no entry, removal of  
24 personal property, or interference resulting in damage to borrowers.

25 10.5 Injury to Business or Property. As a direct and proximate result of Safeguard's  
26 unfair or deceptive acts as set forth above, Plaintiffs suffered injury to their property in an  
27

1 amount to be proven at trial. Putative Class Members suffered similar injuries.

2 10.6 Safeguard's above-listed unfair or deceptive acts constitute violations of  
3 RCW 19.86, *et seq.*

4 10.7 Safeguard is liable to Plaintiffs for treble the amount of their damages, including  
5 those arising from the interference with the full use and enjoyment of their real properties and/or  
6 personal property, caused by the violations of RCW 19.86, *et seq.*

7 10.8 Safeguard is liable to Plaintiffs for their reasonable attorneys' fees and costs  
8 pursuant to RCW 19.86, *et seq.*

9 10.9 Safeguard is similarly liable to the countless Washington borrowers who  
10 experienced the same or similar wrongs as the Representative Plaintiffs.

11  
12 **XI. FIFTH CAUSE OF ACTION:**  
13 **NEGLIGENT SUPERVISION**

14 11.1 Safeguard owed the Jameses a duty to act as a reasonably careful person would  
15 under the same or similar circumstances, including a duty to reasonably assess the lawfulness  
16 of its conduct. Upon learning of harm caused by its property preservation activities, Safeguard  
17 owed the Jameses a duty to mitigate foreseeable harm resulting from those activities.

18 11.2 Safeguard has comprehensive policies and procedures instructing its vendors  
19 that they may not remove non-hazardous personal property prior to the completion of  
20 foreclosure from Washington borrowers' properties.

21 11.3 Safeguard's vendors are its agents and Safeguard expects its vendors to comply  
22 with all requirements set forth in Safeguard's comprehensive policies and procedures.  
23 Safeguard has the right and duty to control its vendors' conduct and to mitigate foreseeable loss  
24 resulting from that conduct. However, Safeguard engages in little to no direct oversight when  
25 its vendors are completing work in the field.  
26  
27

1           11.4 Despite its policies, and prior to the *Jordan* Decision and entering the James  
2 Property, Safeguard received a number of direct complaints from borrowers indicating that its  
3 personal property policies were not being followed. Specifically, complainants alleged that  
4 personal property was unlawfully removed from their homes prior to the completion of  
5 foreclosure by Safeguard and/or its vendors during the completion of property preservation  
6 activities, often conducted in the interior of the home. Safeguard never independently analyzed  
7 Washington law to assess the legality of conducting those activities in response to these  
8 borrower complaints. Safeguard did not change its policies and practices in response to these  
9 borrower complaints. Although it was well aware that vendors were removing personal property  
10 from borrowers' homes prior to the completion of foreclosure in violation of Safeguard's  
11 policies, Safeguard did not increase supervision over its vendors in response to these borrower  
12 complaints.  
13

14  
15           11.5 Even after receiving a number of these complaints, Safeguard ordered one or  
16 more vendors to change the locks on and enter the interior of the James Property. While on the  
17 James Property, one or more of those vendors removed the Jameses' personal property. Such  
18 removal was foreseeable, particularly in light of the complaints Safeguard received from other  
19 borrowers prior to the entry.  
20

21           11.6 The Jameses' personal property was never returned and the James were never  
22 reimbursed for the missing personal property.

23           11.7 A reasonable person in the same or similar circumstances would have taken  
24 action to stop its vendors from removing personal property during property preservation actions  
25 prior to the completion of foreclosure. Safeguard did not do so. Safeguard did not supervise its  
26 vendors while they completed property preservation orders on the James Property.  
27





1  
2 DATED this 23<sup>rd</sup> day of March, 2018.

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 23, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. Notice of this filing will be sent to the parties listed below by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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DATED at Wenatchee, Washington this 23rd day of March, 2018.

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